standard for offshore marine services firms of $10 million in annual receipts. The Agency has received no comments to this proposal. Accordingly, Part 121 of Chapter I, Title 13, of the Code of Federal Regulations is amended by:

1. Renumbering paragraphs (u), (v), (w), (x), and (y) of § 121.3-2 as paragraphs (v), (w), (x), (y), and (z) respectively, and inserting new § 121.3-2(u) to read as follows:

§ 121.3-2 Definition of terms used in this part.

* * * * *

(u) "Offshore marine services" means firms furnishing to concerns engaged in offshore oil and/or natural gas exploration drilling production or marine research, and such services as passenger and freight transportation, rig towing, anchor handling, and related logistical services, to and from the work site or at sea.

* * * * *

2. Revising § 121.3-8(f) by adding subparagraph (4) to read as follows:

§ 121.3-8 Definition of small business for Government procurement.

* * * * *

(f) Transportation. * * *

(4) As small if it is primarily engaged in the provision of offshore marine services as defined in § 121.3-2(u) and its annual receipts do not exceed $10 million.

* * * * *

(3) Revising § 121.3-10(f) by adding subparagraph (5) to read as follows:

§ 121.3-10 Definition of small business for SBA loans.

* * * * *

(f) Transportation and warehousing. * * *

(5) As small if it is primarily engaged in the provision of offshore marine services as defined in § 121.3-2(u) and its annual receipts do not exceed $10 million.

* * * * *

Dated: March 6, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-6408 Filed 3-10-78; 8:45 am]

[4910-13]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINSTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 17687; Amdt. No. 13-13]

PART 13—ENFORCEMENT PROCEDURES

Enforcement Procedures for Cases Involving the Transportation or Shipment by Air of Hazardous Materials

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments prescribe enforcement procedures for cases involving the transportation or shipment by air of hazardous materials under the Hazardous Materials Transportation Act, and update certain other procedures dealing with enforcement of the Federal Aviation Regulations. The requirements are intended to provide persons who are alleged to have violated the hazardous materials regulations with a simple but effective process for submitting information concerning an alleged violation or for contesting a violation determination.

DATE: Effective date, March 13, 1978. Comments requested on operation under the procedures before September 13, 1978.

ADDRESS: Send comments on the procedures to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Docket No. 17687, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Dewey R. Roark, Jr., Regulations and Enforcement Division (AGC-20), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-426-9097.

SUPPLEMENTARY INFORMATION:

THE RULE

In § 1.47(k) of the Regulations of the Office of the Secretary (49 CFR 1.47(d)), the Secretary of Transportation has delegated to the Administrator of the Federal Aviation Administration the functions vested in the Secretary by Sections 109, 110, and 111 of the Hazardous Materials Transportation Act (49 U.S.C. 1808, 1809, and 1810) relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by air.

Pursuant to this delegation, these amendments establish procedures for assessing civil penalties in accordance with Section 110 of the Hazardous Materials Transportation Act, for issuing orders of compliance in accordance with Section 109(a) of the Act, and for obtaining injunctive and other relief in accordance with Section 111 of the Act. The procedures adopted herein provide for notice to an alleged violator and an opportunity for informal conferences with the FAA official who issued the notice, a formal evidentiary hearing before a Hearing Officer, and an appeal to the Administrator. The procedures comply with the provisions of Sections 109 and 110 of the Hazardous Materials Transportation Act that provide for the issuance of an order of compliance and the assessment of a civil penalty "after notice and an opportunity for a hearing." Any appeal to the Administrator from a Hearing Officer's decision and order assessing a civil penalty will be decided on appeal on the record of the FAA hearing and will not involve a trial de novo. It is contemplated that appeal from the Administrator's decision and order would be to a United States Court of Appeals and also would be decided on the record of the FAA hearing and not involve a trial de novo because of a satisfaction of the requirements of due process. Moreover, if the alleged violator fails to request a hearing and refuses to pay a civil penalty assessed by an official authorized to assess a civil penalty, or if he refuses to pay a civil penalty assessed by a Hearing Officer following a hearing and following the exhaustion of his appeal rights, the agency would request the Attorney General to recover the assessed civil penalty in an action brought in the appropriate U.S. District Court in accordance with Section 110(a)(2) of the Hazardous Materials Transportation Act. Such an action in the District Court would be in effect a suit to collect on a judgment and it is contemplated that this would not involve a trial de novo.

With respect to specific procedures adopted herein, it should be noted that the revision of § 13.11 reflects the existing practice whereby not only the officials of the Flight Standards Service but also the officials of the Office of Airport Programs and the Civil Aviation Security Service are authorized to take administrative action. Moreover, the revision incorporates the existing practice of issuing a Warning Notice or a Letter of Correction as the two types of administrative action.

Section 110 of the Hazardous Materials Transportation Act provides that, prior to the referral to the Attorney General for collection, a civil penalty

may be compromised. Thus, § 13.16 provides that the FAA may not only reduce the amount of a proposed civil penalty prior to assessment, but may also compromise an assessed civil penalty at any time prior to referral of the action to the Attorney General.

At the present time, Subpart D of Part 13 provides rules of practice for formal hearings in aircraft registration certificate proceedings. Since it is desirable from the point of view of uniformity and convenience of Hearing Officers to have the same rules of practice apply to all hearings, § 13.31 has been amended to make Subpart D applicable to hearings in aircraft registration certificate proceedings and hazardous materials proceedings. The amendments also revise Subpart D by deleting certain obsolete provisions and by adding new provisions intended to streamline the hearings process.

In addition, a new Subpart E is being adopted to provide procedures for orders of compliance issued in accordance with Section 109 of the Hazardous Materials Transportation Act. New § 13.81 of Subpart E provides that orders of immediate compliance may be issued in cases of imminent hazard. However such orders of immediate compliance will be issued only in the few cases where circumstances and lack of time preclude the use of any other procedures to prevent or ameliorate an imminent hazard to health or safety of life or property. Moreover, the accelerated hearing procedure in § 13.81 is being adopted to protect the alleged violator by affording him an opportunity for a hearing and appeal to the Administrator without delay.

Finally provisions for bringing an action in the appropriate United States District Court for an injunction or other equitable relief and punitive damages have been included in new § 13.25.

Effective Date and Request for Comments

Since these amendments are procedural in nature and represent implementation of existing statutory authority, notice and public procedure thereon are not required, and good cause exists for making them effective less than 30 days after publication. However, the FAA contemplates a review of the procedures established by these amendments after they have been in operation for at least six months and desires public participation in that review. Interested persons are invited to submit such comments as they may desire with respect to the new enforcement procedures. Communications should identify the regulatory docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue SW., Washington, D.C. 20591. All comments recieved on or before September 13, 1978, will be considered during the review, and will be available both before and after that date in the Rules Docket for examination by interested persons.

Drafting Information

The principal authors of this document are Matthew Z. Markotic and Dewey R. Roark, Jr., Office of the Chief Counsel.

Adoption of the Amendments

Accordingly, Part 13 of the Federal Aviation Regulations (14 CFR Part 13) is amended, effective March 13, 1978, as follows:

1. By revising § 13.11 to read as follows:

§ 13.11 Administrative disposition of certain violations.

(a) If it is determined that a violation or an alleged violation of the Federal Aviation Act of 1958, or an order or regulation issued under it, or of the Hazardous Materials Transportation Act, or an order or regulation issued under it, does not require legal enforcement action, an appropriate official of the Flight Standards Service, the Office of Airport Programs, or the Civil Aviation Security Service, or other appropriate FAA official may take administrative action in disposition of the case.

(b) An administrative action under this section does not constitute a formal adjudication of the matter and may be taken by issuing the alleged violator—

(1) A "Warning Notice" which recites available facts and information about the incident or condition, and indicates that it may have been a violation; or

(2) A "Letter of Correction" which confirms the FAA decision in the matter and states the necessary corrective action the alleged violator has taken or agrees to take. If the agreed corrective action is not fully completed, legal enforcement action may be taken.

2. By amending § 13.15 by changing the heading to read as follows:

§ 13.15 Civil penalties: Federal Aviation Act of 1958.

* * * * *

3. By amending § 13.16 by adding new paragraphs (d) through (q) to read as follows:

§ 13.16 Civil penalties: Hazardous Materials Transportation Act.

* * * * *

(d) If a civil penalty is contemplated in a case involving the transportation or shipment by air of hazardous materials, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Regional Counsel concerned sends to the person charged with the violation a notice of proposed civil penalty advising him of the charges and stating the amount of the civil penalty proposed to be assessed. Within 30 days after the service of the notice, the person charged with a violation may—

(1) Present to the official who signed the notice written information in answer to the charges, and, if desired, request a conference with the official who signed the notice in order to present information in answer to the charges;

(2) Offer to pay the amount of the civil penalty proposed to be assessed, or offer to pay a reduced amount and submit reasons for the reduction; or

(3) Request a hearing in accordance with Subpart D of this part.

(e) Within 10 days after the receipt of a reply to any submission made in accordance with paragraphs (d)(1) and (d)(2) of this section, the person charged with a violation may request a hearing in accordance with Subpart D of this part.

(f) The person charged with the violation may pay the amount of the civil penalty proposed to be assessed, or an amount agreed upon, by sending a certified check or money order for that amount, payable to the Federal Aviation Administration, to the official who issued the notice of proposed civil penalty. The official then issues an order assessing the civil penalty in the proposed or agreed upon amount.

(g) If the person charged with the violation requests a hearing, the procedure in Subpart D of this part applies. At the close of the hearing, the Hearing Officer will, either on the record or subsequently in writing, issue—

(1) A decision which includes the reasons for his decision and order; and

(2) An order which either—

(i) Dismisses the charges; or

(ii) Sets forth the violation and assesses a civil penalty not greater than the amount proposed in the notice of proposed civil penalty.

(h) Either party may appeal from the Hearing Officer's decision to the Administrator by filing a notice of appeal within 20 days after the date of the decision and serving a copy on the other party. The appellant shall file an appeal brief within 40 days after the date of the decision and serve a copy on the other party. Any reply brief must be filed within 20 days after service of the appeal brief. A copy of the reply brief must be served on the appellant.

(i) If no appeal is filed from the Hearing Officer's decision and order or if an appeal is withdrawn by the ap-

pellant prior to the Administrator's decision, the order of the Hearing Officer dismissing the charges or assessing the civil penalty is the final agency order in the case.

(j) If an appeal is filed from the Hearing Officer's order the Administrator reviews the record of the hearing, and issues a decision and order dismissing, reversing, modifying, or affirming the Hearing Officer's order. The Administrator does not assess a civil penalty in an amount greater than the amount proposed in the notice of proposed civil penalty. The Administrator's decision includes the reasons for his action, and his order is the final agency order in the case.

(k) If the person charged with the violation does not request a hearing in accordance with Subpart D of this part, and does not pay the amount of the civil penalty proposed to be assessed, or an amount agreed upon, the official who issued the notice of proposed civil penalty issues an order assessing a civil penalty in an amount he determines to be appropriate or takes such other action as may be appropriate. This official does not assess an amount greater than the amount proposed in the notice of proposed civil penalty. The order issued under this paragraph is the final agency order in the case.

(l) An order issued under this section assessing a civil penalty against a person charged with a violation is issued only after consideration of—

(1) The nature and circumstances of the violation;

(2) The extent and gravity of the violation;

(3) The person's degree of culpability;

(4) The person's history of prior violations;

(5) The person's ability to pay;

(6) The effect on the person's ability to continue in business; and

(7) Such other matters as justice may require.

(m) If the person charged with a violation asserts that he cannot pay the proposed penalty or assessment or that it would prevent him from continuing in business, he should provide substantiating information in support of the assertion to the official who is issuing the civil penalty assessment.

(n) If an assessed civil penalty is not paid within 60 days after service of the order assessing it, the official who issued the notice of proposed civil penalty may refer it to the Attorney General, or his delegate, with a request that an action to collect the assessed penalty be brought in the appropriate United States District Court.

(o) The amount of an assessed civil penalty may be compromised by the official who assessed the penalty at any time prior to its referral to the Attorney General.

(p) Filing and service of documents under this section shall be accomplished in accordance with § 13.43; and the periods of time specified in this section shall be computed in accordance with § 13.44.

(q) The officer who signed the notice of proposed civil penalty, for good cause shown, may grant an extension of time to file any document specified in this section, except documents to be filed with the Administrator. Extensions of time to file documents with the Administrator may be granted by the Administrator upon written request, served upon all parties, and for good cause shown.

4. By adding a new § 13.25 to read as follows:

§ 13.25 Injunctions.

(a) Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting a violation of the Federal Aviation Act of 1958, or any regulation or order issued under it for which the FAA exercises enforcement responsibility, or, with respect to the transportation or shipment by air of any hazardous materials, in any act or practice constituting a violation of the Hazardous Materials Transportation Act, or any regulation or order issued under it for which the FAA exercises enforcement responsibility, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Regional Counsel concerned, or the Aeronautical Center Counsel may request the Attorney General, or his delegate, to bring an action in the appropriate United States District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages, as provided by Section 1007 of the Federal Aviation Act of 1958 (49 U.S.C. 1487) and Section 111(a) of the Hazardous Materials Transportation Act (49 U.S.C. 1810).

(b) Whenever it is determined that there is substantial likelihood that death, serious illness, or severe personal injury, will result from the transportation by air of a particular hazardous material before an order of compliance proceeding, or other administrative hearing or formal proceeding to abate the risk of the harm can be completed, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Regional Counsel concerned may bring, or request the Attorney General to bring, an action in the appropriate United States District Court for an order suspending or restricting the transportation by air of the hazardous material or for such other order as is necessary to eliminate or ameliorate the imminent hazard, as provided by Section 111(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1810).

5. By amending Subpart D by revising the heading to read as follows:

Subpart D—Rules of Practice for FAA Hearings

* * * * *

6. By revising § 13.31 to read as follows:

§ 13.31 Applicability.

This subpart applies to proceedings in which a hearing has been requested in accordance with §§ 13.16(d)(3), 13.16(e), 13.19(c)(5), 13.75(a)(2), 13.75(b), or 13.81(e).

7. By revising § 13.35 to read as follows:

§ 13.35 Request for hearing.

(a) A request for hearing must be made in writing to the Office of the Hearing Officers, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. It must describe briefly the action proposed by the FAA, and must contain a statement that a hearing is requested. A copy of the request for hearing and a copy of the answer required by paragraph (b) of this section must be served on the official who issued the notice of proposed action.

(b) An answer to the notice of proposed action must be filed with the request for hearing. All allegations in the notice not specifically denied in the answer are deemed admitted.

(c) Within 15 days after service upon him of the copy of the request for hearing, the official who issued the notice of proposed action forwards a copy of that notice, which serves as the Complaint, to the Office of the Hearing Officers.

8. By revising § 13.37 (d) and (k) to read as follows:

§ 13.37 Hearing Officer's powers.

* * * * *

(d) Adopt procedures for the submission of evidence in written form.

* * * * *

(k) Issue decisions, make findings of fact, make assessments, and issue orders, as appropriate.

§ 13.41 [Reserved]

9. By revoking and reserving § 13.41.

10. By revising § 13.43 to read as follows:

§ 13.43 Service and filing of pleadings, motions, and documents.

(a) Copies of all pleadings, motions, and documents filed with the Office of the Hearing Officers must be served upon all parties to the proceeding by the person filing them.

(b) Service may be made by personal delivery or by mail.

(c) A certificate of service shall accompany all documents when they are tendered for filing and shall consist of a certificate of personal delivery or a certificate of mailing, executed by the person making the personal delivery or mailing the document.

(d) Whenever proof of service by mail is made, the date of mailing or the date as shown on the postmark shall be the date of service, and where personal service is made, the date of personal delivery shall be the date of service.

(e) The date of filing is the date the document is actually received.

11. By adding a new § 13.44 to read as follows:

§ 13.44 Computation of time and extension of time.

(a) In computing any period of time prescribed or allowed by this subpart, the date of the act, event, default, notice or order after which the designated period of time begins to run is not to be included in the computation. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday for the FAA, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

(b) Upon written request filed with the Office of the Hearing Officers and served upon all parties, and for good cause shown, a Hearing Officer may grant an extension of time to file any documents specified in this subpart.

12. By revising § 13.47 to read as follows:

§ 13.47 Withdrawal of notice or request for hearing.

At any time before the hearing, the FAA counsel may withdraw the notice of proposed action, and the party requesting the hearing may withdraw his request for hearing.

13. By amending § 13.49 by deleting the word "certificate" from paragraph (a), and by revoking and reserving paragraph (b).

§ 13.49 Motions.

* * * * *

(b) [Reserved.]

* * * * *

14. By revising § 13.55 to read as follows:

§ 13.55 Notice of hearing.

The Hearing Officer shall set a reasonable date, time, and place for the hearing, and shall give the parties adequate notice thereof and of the nature of the hearing. Due regard shall be given to the convenience of the parties with respect to the place of the hearing.

15. By amending § 13.57 by adding a new paragraph (d) to read as follows:

§ 13.57 Subpoenas and witness fees.

* * * * *

(d) Notwithstanding the provisions of paragraph (c) of this section, the FAA pays the witness fees and mileage if the Hearing Officer who issued the subpoena determines, on the basis of a written request and good cause shown, that—

(1) The presence of the witness will materially advance the proceeding; and

(2) The party at whose instance the witness is subpoenaed would suffer a serious hardship if required to pay the witness fees and mileage.

§ 13.59 [Amended]

16. By amending § 13.59 by deleting the second and third sentences of paragraph (a).

17. By amending § 13.67 by revising the heading to read as follows:

§ 13.67 Final order of Hearing Officer in certificate of aircraft registration proceedings.

* * * * *

18. By adding a new Subpart E to read as follows:

Subpart E—Orders of Compliance Under the Hazardous Transportation Act

Sec.
13.71 Applicability.
13.73 Notice of proposed order of compliance.
13.75 Reply or request for hearing.
13.77 Consent order of compliance.
13.79 Hearing.
13.81 Order of immediate compliance.
13.83 Appeal.
13.85 Filing, service, and computation of time.
13.87 Extension of time.

AUTHORITY: Secs. 109, 110, 111, hazardous Materials Transportation Act (49 U.S.C. 1808, 1809, 1810); sec. 302(f), 303(d), 313(a), 1007, Federal Aviation Act of 1958 (49 U.S.C. 1343(f), 1344(d), 1354(a), 1487); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 1.47, Regulations of the Office of the Secretary of Transportation (49 CFR 1.47).

Subpart E—Orders of Compliance Under the Hazardous Materials Transportation Act

§ 13.71 Applicability.

Whenever the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Regional Counsel concerned has reason to believe that a person is engaging in the transportation or shipment by air of hazardous materials in violation of the Hazardous Materials Transportation Act, or any regulation or order issued under it for which the FAA exercises enforcement responsibility, and the circumstances do not require the issuance of an order of immediate compliance, he may conduct proceedings pursuant to section 109 of that Act (49 U.S.C. 1808) to determine the nature and extent of the violation, and may thereafter issue an order directing compliance.

§ 13.73 Notice of proposed order of compliance.

A compliance order proceeding commences when the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Regional Counsel concerned sends the alleged violator a notice of proposed order of compliance advising him of the charges and setting forth the remedial action sought in the form of a proposed order of compliance.

§ 13.75 Reply or request for hearing.

(a) Within 30 days after service upon him of a notice of proposed order of compliance, the alleged violator may—

(1) File a reply in writing with the official who issued the notice; or

(2) Request a hearing in accordance with Subpart D of this part.

(b) If a reply is filed, as to any charges not dismissed or not subject to a consent order of compliance, the alleged violator may, within 10 days after receipt of notice that the remaining charges are not dismissed, request a hearing in accordance with Subpart D of this part.

(c) A reply must—

(1) Respond to each factual allegation and state whether it is admitted or denied; and

(2) Set forth any affirmative defenses and include a statement of the form and nature of proof by which those defenses are to be established.

(d) If it is necessary to respond to an amendment to the notice, the reply may be amended within 15 days after service of the amended notice.

(e) If the alleged violator elects not to contest one or more factual allegations, he shall so state in the reply. In the reply the alleged violator may propose an appropriate order for issuance or propose the negotiation of a consent order.

(f) Failure of the alleged violator to file a reply or request a hearing within the period provided in paragraph (a) of this section constitutes—

(1) A waiver of his right to appeal and contest the allegations, and to a hearing; and

(2) Authorizes the official who issued the notice to find the facts to be as alleged in the notice and to issue an appropriate order directing compliance, without further notice or proceedings.

§ 13.77 Consent order of compliance.

(a) At any time before the issuance of an order of compliance, the official

who issued the notice and the alleged violator may agree to dispose of the case by the issuance of a consent order of compliance by the official.

(b) A proposal for a consent order submitted to the official who issued the notice under ths section must include—

(1) A proposed order of compliance;

(2) An admission of all jurisdictional facts;

(3) An express waiver of right to further procedural steps and of all rights to judicial review;

(4) An incorporation by reference of the notice and an acknowledgment that the notice may be used to construe the terms of the order of compliance; and

(5) If the issuance of a consent order has been agreed upon after the filing of a request for hearing in accordance with Subpart D of this part, the proposal for a consent order shall include a request to be filed with the Hearing Officer withdrawing the request for a hearing and requesting that the case be dismissed.

§ 13.79 Hearing.

If an alleged violator requests a hearing in accordance with § 13.75, the procedure of Subpart D of this part applies. At the close of the hearing, the Hearing Officer, on the record or subsequently in writing, sets forth his findings and conclusion and the reasons therefor, and either—

(a) Dismisses the notice of proposed order of compliance; or

(b) Issues an order of compliance.

§ 13.81 Order of immediate compliance.

(a) Notwithstanding §§ 13.73 through 13.79, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Regional Counsel concerned may issue an order of immediate compliance, which is effective upon issuance, if he finds that—

(1) There is strong probability that a violation is occurring or is about to occur;

(2) The violation poses a substantial risk to health or to safety of life or property; and

(3) The public interest requires the avoidance or amelioration of that risk through immediate compliance and waiver of the procedures afforded under §§ 13.73 through 13.79.

(b) An order of immediate compliance is served promptly upon the person against whom the order is issued by telephone or telegram, and a written statement of the relevant facts and the legal basis for the order, including the findings required by paragraph (a) of this section, is served promptly by personal service or by mail.

(c) The official who issued the order of immediate compliance may rescind or suspend the order if it appears that the criteria set forth in paragraph (a) of this section are no longer satisfied, and, when appropriate, may issue a notice of proposed order of compliance under § 13.73 in lieu thereof.

(d) If at any time in the course of a proceeding commenced in accordance with § 13.73 the criteria set forth in paragraph (a) of this section are satisfied, the official who issued the notice may issue an order of immediate compliance, even if the period for filing a reply or requesting a hearing specified in § 13.75 has not expired.

(e) Within 3 days after the service upon him of an order of immediate compliance, the alleged violator may request a hearing in accordance with Subpart D of this part and the procedure in that subpart will apply except that—

(1) The case will be heard within fifteen days after the date of the order of immediate compliance unless the alleged violator requests a later date;

(2) The order will serve as the complaint; and

(3) The Hearing Officer shall issue his decision and order dismissing, reversing, modifying, or affirming the order of immediate compliance on the record at the close of the hearing.

(f) The filing of a request for hearing in accordance with paragraph (e) of this section does not stay the effectiveness of an order of immediate compliance.

(g) At any time after an order of immediate compliance has become effective, the official who issued the order may request the Attorney General, or his delegate, to bring an action for appropriate relief in accordance with § 13.25.

§ 13.83 Appeal

(a) Any person against whom an order of compliance has been issued by a Hearing Officer or the official who issued the notice of proposed order of compliance may appeal from the order of the Hearing Officer by filing a notice of appeal with the Administrator within 20 days after the date of issuance of the order.

(b) Any person against whom an order of immediate compliance has been issued in accordance with § 13.81 or the official who issued the order of immediate compliance may appeal from the order of the Hearing Officer by filing a notice of appeal with the Administrator within three days after the date of issuance of the order by the Hearing Officer.

(c) Unless the Administrator expressly so provides, the filing of a notice of appeal does not stay the effectiveness of an order of immediate compliance.

(d) If a notice of appeal is not filed from the order of compliance issued by a Hearing Officer, such order is the final agency order of compliance.

(e) Any person filing an appeal authorized by paragraph (a) of this section shall file an appeal brief with the Administrator within 40 days after the date of the issuance of the order, and serve a copy on the other party. Any reply brief must be filed within 20 days after service of the appeal brief. A copy of the reply brief must be served on the appellant.

(f) Any person filing an appeal authorized by paragraph (b) of this section shall file an appeal brief with the Administrator with the notice of appeal and serve a copy on the other party. Any reply brief must be filed within 3 days after receipt of the appeal brief. A copy of the reply brief must be served on the appellant.

(g) On appeal the Administrator reviews the available record of the proceeding, and issues an order dismissing, reversing, modifying, or affirming the order of compliance or the order of immediate compliance. The Administrator's order includes the reasons for his action.

(h) In cases involving an order of immediate complianace, the Administrator's order on appeal is issued within 10 days after the filing of the notice of appeal.

§ 13.85 Filing, service and computation of time.

Filing and service of documents under this subpart shall be accomplished in accordance with § 13.43, except service of orders of immediate compliance under § 13.81(b); and the periods of time specified in this subpart shall be computed in accordance with § 13.44.

§ 13.87 Extension of time.

(a) The official who issued the notice of proposed order of compliance, for good cuase shown, may grant an extension of time to file any document specified in this subpart, except documents to be filed with the Administrator.

(b) Extensions of time to file documents with the Administrator may be granted by the Administrator upon written request, served upon all parties, and for good cause shown.

(Secs. 109, 110, and 111, Hazardous Materials Transportation Act (49 U.S.C. 1808, 1809, and 1810); sec. 302(f), 303(d), 313(a), and 1007, Federal Aviation Act of 1958 (49 U.S.C. 1343(f), 1344(d), 1354(a), and 1487); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and § 1.47, Regulations of the Office of the Secretary of Transportation (49 CFR 1.47).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on February 28, 1978.

LANGHORNE BOND,
Administrator.

[FR Doc. 78-6447 Filed 3-10-78; 8:45 am]

[4910-13]

[Docket No. 15594; Amdts. 25-43 and 91-148]

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

PART 91—GENERAL OPERATING AND FLIGHT RULES

Transport Category Airplanes—Pitot Heat Indication Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds requirements for the installation of a pitot heat indication system for the type certification of transport category airplanes having flight instrument pitot heating systems and for the installation, within 3 years, of a pitot heat indication system in all transport category airplanes equipped with flight instrument pitot heating systems. The amendment is based on service experience that indicates that pitot heat indication systems are needed in transport category airplanes having flight instrument pitot heating systems to provide greater assurance that incidents and accidents, caused by pilot reliance on faulty flight data instrumentation indications resulting from ice blockage of pitot ports, do not occur.

EFFECTIVE DATE: April 12, 1978.

FOR FURTHER INFORMATION CONTACT:

Raymond E. Ramakis, Regulatory Projects Branch, Safety Regulations Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone 202-755-8716.

SUPPLEMENTARY INFORMATION:

BACKGROUND AND DISCUSSION OF COMMENTS

This amendment is based on a notice of proposed rulemaking (Notice 76-12) published in the FEDERAL REGISTER on April 22, 1976, (41 FR 16827). Except as discussed herein, the reasons for this amendment are the same as those contained in Notice 76-12.

Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all matter presented. A number of substantive changes and changes of an editorial and clarifying nature have been made to the proposed rule based upon the relevant comments received and upon further review within the FAA. The significant public comments and noneditorial changes to the proposed rule are discussed below.

The majority of the comments received in response to Notice 76-12 were opposed to the proposed requirement for a pitot heat indication system. These commentators asserted that a properly trained pilot following proper checklist procedures would not leave the pitot heat switch turned off, when it should be on, that such a pilot would be able to recognize incorrect flight data caused by an inoperative pitot heating element and resultant pitot tube ice accumulation, and that, after recognition such a pilot would use other flight deck instrumentation to continue safe flight. These commentators recommended that the FAA encourage pilot professionalism and the use of proper checklist procedures instead of requiring the addition of an unnecessary and costly indicator to the already too numerous indicators, both visual and aural, that are installed on the flight deck. While the FAA agrees with the need for proper training and the use of proper flight deck checklist procedures, experience indicates that human error is likely to continue to occur and that with respect to pitot heating systems this could and has led to disastrous results. The addition of a pitot heat indication system while not guaranteeing against human error will provide additional assurance that pilots will become aware as early as possible of potentially dangerous situations. Considering the benefits expected and the relatively limited cost involved in the installation of a pitot heat indication system, the FAA believes the requirement to be warranted.

A number of commentators suggested the proposal be revised to permit the use of alternate indicating systems. Among the alternatives suggested were pitot heat element failure warning indicators, ammeters to measure current in pitot heat elements, and indicators to warn of ice accumulation at the pitot ports. In addition to being beyond the scope of Notice 76-12, the FAA does not believe any of these suggested alternate systems to be equivalent to the system proposed with respect to certain necessary characteristics. These alternates either provide no effective indication of whether the pitot heating system is switched on, provide a display that can be easily misinterpreted or overlooked by a flight crew, or provide an indication at a time after flight instrumentation indications have been adversely affected.

Several commentators pointed out that warning lights, which are usually red in color, are used only to provide an indication to the flight crew that a very serious situation exists that requires immediate corrective action. The commentators contended, and the FAA agrees, that the existence of an inoperative pitot heating system is not such a situation. Based on these comments, proposed § 25.1326(a) has been revised to change the required color of the indication light to amber, a color used to alert the flight crew of a less serious situation. In addition, proposed §§ 25.1326 and 91.50 have been revised to redesignate the name of the required system as a "pitot heat indication system".

As an alternative to requiring an indication for an inoperative pitot heating system, one commentator suggested that high reliability pitot heating elements could be required. The FAA does not agree. The reliability of pitot heating elements has not reached a level that would, for the reasons previously discussed, negate the need for an indication system.

A large number of commentators argued that the proposal was not consistent with the design of modern transport category airplanes that have master caution lights and annunciator panel displays and that the proposal should be revised to allow the incorporation of the pitot heat indication system into the existing displays. In this connection, the commentators stated that the proposed requirement, contained in § 25.1326(b), that the indicator be adjacent to the pilot in command airspeed indicator, and the proposed requirement, contained in § 25.1326(d), that the indicating light not be extinguishable when a pitot heating element is inoperative, could not be met with the existing master caution light and annunciator panel display. In addition, with respect to proposed § 25.1326(d), one commentator argued that an unnecessary battery drain would result from the proposal that could be hazardous during power-out conditions. The FAA agrees that the required pitot heat indication system should be allowed to be a part of the master caution light and annunciator panel display. This type of display is extremely effective because of its central location and the ease with which it can be checked by the flight crew. Accordingly, proposed §§ 25.1326 (b) and (d) have been deleted. In addition, consistent with these changes, proposed § 25.1326 has been revised to provide that the required indication must be to a flight crewmember instead of the pilot. These changes also respond to a comment that the proposal went too far in dictating design.

One commentator questioned the requirement of proposed § 25.1326(c) which refers to pitot heating system

switch positions. The commentator pointed out that on many airplanes the pitot heating system activates automatically and there exists no "switch." Based on this comment, the proposal has been revised to more clearly cover automatic switches.

One commentator pointed out that some airplanes have several pitot heating elements and questioned whether under proposed § 25.1326 an indicator would be required for each of these. As proposed the pitot heat indication system was required to provide an indication of an inoperative pitot heating system. Based on this comment, proposed § 25.1326(c) (§ 25.1326(b) as adopted) has been revised to make it clear that the indication is required irrespective of which pitot heating element is inoperative. Another commentator argued that the pitot heat indication system should indicate to the pilot which pitot heating element is inoperative. The FAA does not agree with this comment. Once the pilot is aware that there is an inoperative pitot heating element, the pilot can utilize other available instrumentation to determine which, if any, flight instruments are accurate and take appropriate action. Therefore, separate pitot heat indications are not necessary.

Based on several comments proposed § 25.1326(e) has been deleted. That provision is adequately covered under § 25.1301.

Several commentators objected to the provision contained in proposed § 91.50 that would require the installation of pitot heat indication systems in all transport category airplanes within 3 years. These commentators argued that service experience did not justify the adoption of the rule and that if the rule were to be adopted it should only apply to air carriers, air taxis, and commercial operators, or only to newly manufactured airplanes. The FAA disagrees. Contrary to the claims of the commentators, service experience justifies the adoption of the rule. At least one accident and a number of incidents have been reported that might have been avoided if a pitot heat indication system were installed, and the FAA believes that accidents and incidents will be avoided in the future by the adoption of this amendment. With respect to the operations involved, the FAA is unaware of any data or information to indicate that air carriers, air taxis, or commercial operators are any more susceptible than general aviation operators to the problems at which this amendment is directed. Moreover, due to the relative inexpense of the required indication system, the FAA does not believe restricting the retrofit rule to certain transport category airplanes is justified when the safety benefits are considered.

One commentator argued that 5 years would be necessary to install the pitot heat indication systems under proposed § 91.50. Another commentator stated that the 3 years provided in the proposal was too lengthy a period of time. In this connection, sufficient time is needed for the production, procurement, and installation of the required indication system. The FAA believes the 3 years proposed is a realistic time for accomplishing these tasks. However, the FAA recognizes that conditions beyond the control of an operator can occur to delay compliance with the rule. This could be the case even though a good faith effort was made by an operator to comply. Because of this, the proposal has been revised to provide, under appropriate circumstances, for a limited extension of the compliance date in accordance with a schedule acceptable to the FAA.

Many commentators objected to proposed §§ 91.50 (b) and (c) which would have required the termination of a flight at the nearest suitable airfield if a pitot heating system became inoperative during flight and would have only permitted flights to a base for repair if the actual or forecasted free air temperature was above 32 degrees F. These commentators argued that the proposal could create other hazards by requiring landings at unfamiliar airports and that the altitudes permitted for flights to repair bases under the 32 degree F. temperature criteria were unrealistically low. The FAA agrees with these comments. A pilot made aware of a malfunctioning pitot heating system would be able to safely continue operations in accordance with procedures with which pilots are aware. These procedures are contained in airplane flight manuals and minimum equipment lists. Moreover, many transport category airplanes are equipped with dual pitot and flight instrumentation systems and angle of attack indicators to assist the pilot in safely operating an aircraft with a malfunctioning pitot heating system. Accordingly, proposed §§ 91.50 (b) and (c) have been deleted.

One commentator suggested that a pitot heat indication system should be required in each aircraft approved for operations under instrument flight rules (IFR). The FAA does not agree. In addition to the comment being beyond the scope of the notice, the FAA does not believe the benefits to be expected from the commentator's suggestion justify its adoption.

The FAA has determined, based on an evaluation of the expected benefits and other impacts on the public and private sectors, that the adoption of this amendment will result in greater assurance that pilots of transport category airplanes will not be dangerously misled by faulty flight instrument indications caused by pitot tube ice accumulation. Based on service experience and other information available, it is estimated that over a 5 year period approximately 140 lives may be saved by this amendment with the cost of equipment installation being between $500 and $700 for each of the approximately 4,300 airplanes covered by the amendment.

Drafting Information

The principal authors of this document are Mr. Thomas Ryan, Flight Standards Service, and Mr. Samuel Podberesky, Office of the Chief Counsel.

The Amendment

Accordingly, parts 25 and 91 of the Federal Aviation Regulations (14 CFR parts 25 and 91) are amended effective April 12, 1978, as follows:

1. By adding a new § 25.1326 to read as follows:

§ 25.1326 Pitot heat indication systems.

If a flight instrument pitot heating system is installed, an indication system must be provided to indicate to the flight crew when that pitot heating system is not operating. The indication system must comply with the following requirements:

(a) The indication provided must incorporate an amber light that is in clear view of a flight crewmember.

(b) The indication provided must be designed to alert the flight crew if either of the following conditions exist:

(1) The pitot heating system is switched "off".

(2) The pitot heating system is switched "on" and any pitot tube heating element is inoperative.

2. By adding a new § 91.50 to read as follows:

§ 91.50 Transport category airplanes—Pitot heat indication systems.

(a) Except as provided in paragraph (b) of this section, after April 12, 1981, no person may operate a transport category airplane equipped with a flight instrument pitot heating system unless the airplane is also equipped with an operable pitot heat indication system that complies with § 25.1326 of this chapter in effect on April 12, 1978.

(b) An operator may obtain an extension of the April 12, 1981, compliance date specified in paragraph (a) of this section, but not beyond April 12, 1983, from the Director, Flight Standards Service if the operator:

(1) Shows that, due to circumstances beyond its control, it cannot comply by the specified compliance date; and

(2) Submits, by the specified compliance date, a schedule for compliance, acceptable to the Director, indicating

that compliance will be achieved at the earliest practicable date.

(Secs. 313(a), 601, 603, 604, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, 1424); sec. 6(c), Department of Transportation Act (49 U.S.C.1655(c)).)

NOTE.—The FAA has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on March 6, 1978.

LANGHORNE BOND,
Administrator.

[FR Doc. 78-6460 Filed 3-10-78; 8:45 am]

[4910-13]

[Docket No. 78-SO-14; Amdt. 39-3153]

PART 39—AIRWORTHINESS DIRECTIVES

Teledyne Continental Motors Models TSIO-520-J and TSIO-520-N Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: the nature of this Airworthiness Directive (A.D.) is to require repetitive inspection, adjustment, and/or replacement, if necessary, of the left-hand and right-hand engine induction system elbows on the intake manifolds. The intended effect of this A.D. is to prevent loss of engine power. Instances have occurred inflight in which the flexible elbow separated from the induction manifold which resulted in total or partial loss of engine power. Elbow ruptures have also caused loss of engine power or engine roughness.

DATES: Effective Date: March 14, 1978. Compliance Date: Prior to accumulation of next 25 hours time in service and thereafter at each 100 hours time in service.

ADDRESSES: Copies of Teledyne Continental Motors (TCM) Service Bulletin M78-5 may be obtained from Teledyne Continental Motors, Aircraft Products Division, P.O. Box 90, Mobile, Ala. 36601. Copies of TCM Service Bulletin M78-5 are maintained in the A.D. Docket File and may be examined in Room 264, Federal Aviation Administration, Southern Region, 3400 Whipple Street, East Point, Ga. 30344.

FOR FURTHER INFORMATION CONTACT:

H. D. Roe, ASO-214, Propulsion Section, Engineering and Manufacturing Branch, Southern Region, P.O. Box 20636, Atlanta, Ga. 30320, telephone 404-763-7435.

SUPPLEMENTARY INFORMATION: There have been reports of engine induction system flexible elbow rupturing and separation on Teledyne Continental Motors (TCM) Models TSIO-520-J, TSIO-520-N and on Riley Supplemental Type Certificate (STC) No. SE1908SW (TCM) TSIO-520-K modified engines.

Elbow separation or rupture caused by excessive relative motion between the engine and airframe can produce improper fuel air mixtures to the engine which can cause partial or total loss of engine power.

Since these conditions are likely to exist or develop in other airplanes using this part, a condition exists that requires immediate adoption of this regulation. It is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

DRAFTING INFORMATION

The principal authors of this document are H. D. Roe, Flight Standards Division, and Eddie L. Thomas, Office of the Regional Counsel.

ADOPTION OF AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

TELEDYNE CONTINENTAL MOTORS. Applies to Model TSIO-520-J and TSIO-520-N engines installed in, but not limited to, Cessna Models 340-A, 414 and Model 340 as modified by STC's SA1881SW or SA186NW.

Compliance: Prior to the accumulation of 25 hours time in service after the effective date of this A.D. and thereafter at intervals not to exceed 100 hours time in service.

To prevent engine malfunction or stoppage accomplish the following: Inspect left and right TCM flexible elbows, TCM Part No. 635930, for proper installation, structural condition and clamp tightness as follows:

(1) Inspect TCM Part No. 635930 for ruptures or cracks, particularly in the convoluted areas. Inspect for wall porosity, indication of leakage or broken fibers. If these conditions are found to exist, replace with serviceable parts.

(2) Inspect the elbow installation for full engagement over intake manifold and intercooler nipple beads with the hose clamps properly located behind nipple beads.

(3) Check torque on left and right flexible intake manifold clamps (Cessna Part No. U84-270-SH) and intercooler clamps (Cessna Part No. U84-260-SH) for 45 to 50 inch pounds. On aircraft which use TCM clamps (Part No. 631972) at these joints, check for torque of 25 to 30 inch pounds. On Riley conversions which use Riley P/N 631972 clamps on these joints, check for 30-35 inch pounds.

(4) Alternate methods of compliance may be acceptable if approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region, Atlanta, Ga.

(5) Appropriate log book entries must be made in accordance with FAR 43.9.

This amendment becomes effective March 14, 1978.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c), and 14 CFR 11.89.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in East Point, Ga., February 28, 1978.

GEORGE R. LACAILLE,
Acting Director,
Southern Region.

[FR Doc. 78-6450 Filed 3-10-78; 8:45 am]

[1505-01]

[Airspace Docket No. 78-EA-8]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Terminal Control Area; New York, N.Y.

Correction

In FR Doc. 78-5322 appearing at page 8507 in the issue for Thursday, March 2, 1978, in the third column of page 8507, in the 12th line of the description of Area A, the number "349°" should have read "340°". Also, in the second line of the description of Area B, the number "340°" should have read "349°".

[3510-25]

Title 15—Commerce and Foreign Trade

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 371—GENERAL LICENSES

Increased Value for Gift Parcels

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The dollar-value limitation placed on the combined total domestic retail value of commodities included in a gift parcel shipped under General License GIFT is increased